



Outreach

Winter 2004

Honoring Black History Month

by Governor James E. McGreevey

Adam Clayton Powell, Jr., was a flamboyant and controversial figure in the civil rights movement, and indeed throughout most of his political career. While serving as Chairman of the House Committee on Education and Labor, he was also credited with pushing through passage of sweeping national civil rights legislation that outlawed discrimination in public places and employment.

During a commencement speech on May 29, 1966, at prestigious Howard University, the minister and maverick United States Congressman, known for dispensing fiery oratory from the pulpit of Harlem's Abyssinian Baptist Church, where he served as senior pastor, told his enraptured audience that "Human rights are God given. Civil rights are man made."

Regardless of one's individual religious beliefs, the meaning of the late civil rights leader's words still resonate today, as the nation pauses to observe Black History Month and New Jersey writes a new chapter in its own civil rights history.

I am proud of the accomplishments that my administration has made to strengthen New Jersey's civil rights laws and to continue toward the goal of ensuring that all our residents enjoy the freedom that is their birthrights.

In just the past two years, working with the Legislature, I have signed into law measures that move us closer to that goal. Among them is legislation that:

- Makes racial profiling a criminal act and puts the force of law behind any targeting, harassment or illegal searches based on race and ethnicity;



- Requires every school district in the State to establish policies to address and prevent bullying, including bias-based bullying, while insuring the physical and emotional safety of students;
- Evens the playing field for businesses owned by women and minorities to compete for State contracts by reducing documentation requirements previously needed to obtain bidding certification;
- Amends the New Jersey Law Against Discrimination (LAD) to prohibit housing discrimination based on the source of lawful income a tenant or purchaser uses for rent or mortgage payments. This means that recipients of federal "Section 8" housing assistance who are otherwise qualified cannot be denied access to decent housing.

The civil rights movement, and the struggles and sacrifices that were defining moments in this great nation's ability to advance beyond familiar boundaries to uphold its principles of fairness, equality and decency, came at an enormous price for many Americans. But we are a stronger and more compassionate nation because of those struggles and experiences.

That's why it's so important that our young people are taught at an early age about the experiences of African-Americans throughout our nation's history. Indeed, that is the aim of the Amistad Bill, which I signed in 2002, and incorporates African-American history into the traditional curriculum of New Jersey's schools. The more our young leaders of tomorrow understand about our national heritage, and the contributions African-Americans have made in the fields of law, medicine, academia, science and industry, the more they will appreciate our diversity and how it enriches all our lives.

Black History Month serves to remind all of us of the fundamental rights to which all people are entitled and inspires us to work harder to achieve equal opportunities and remove discriminatory obstacles. New Jersey must continue to advance civil rights and social justice, and those of us in leadership positions must summon the will to take a stand for fairness and dignity. I am proud to

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Reorganization of Division of Law Creates Civil Rights Practice Group

by Attorney General Peter C. Harvey



Attorney General Peter C. Harvey

On October 30, 2003, the Director of the Division of Law (DOL), and I announced a comprehensive plan to reorganize the structure of the DOL as part of our ongoing efforts to improve our service to client agencies.

To achieve these goals, we have created "practice groups" with the goal of streamlining the office and creating more client-focused sections reporting directly to Assistant Attorneys General (AAGs) responsible for overseeing them.

Each of the various sections comprising the practice groups are led by their section chiefs, who serve as the primary intermediaries between the Deputy Attorneys General (DAsG) within their section and the DOL management.

Because of my strong commitment to fighting and preventing discrimination, I have established a new Civil Rights practice group. AAG Jeffrey Burstein, who has dedicated much of his career in the DOL to representing the Division on Civil Rights (DCR), will oversee this practice group, which also includes the Elections section. DAG Charles Cohen will continue to head the Civil Rights section as Acting Section Chief, having served nearly nine years as Assistant Section Chief in charge of Civil Rights.

In conjunction with DCR Director J. Frank Vespa-Papaleo, the Civil Rights section will become more proactive in its approach to enforcing New Jersey's Law Against Discrimination (LAD). I am particularly enthusiastic about efforts already under way in the area of housing, including possible joint initiatives with the federal Department of Housing and Urban Development (HUD), and statutory changes which have led to the prosecution of landlords and real estate agents who refuse to rent property to recipients of "Section 8" government housing assistance.

The success of projects already underway will lead to further expansion of the scope of the DCR's work. To facilitate that, a primary long-range goal of this reorganization plan is to increase the number of DAsG assigned to the Civil Rights section. In addition to DAG Cohen, current Civil Rights DAsG James Michael, Donna Arons, Anne Marie Kelly and Jacqueline Pham have recently been joined by DAsG Brian Lipman and Joyce Wan. It is expected that additional attorneys will become part of the team shortly.

This reorganization plan has been the impetus for an exciting period of growth in New Jersey's work to protect the civil rights of its citizens. I will continue to support the efforts of the people at DCR and their attorneys in the DOL. My commitment to this extremely important area of the law grows stronger as the hard work of the people involved shows positive, tangible results.

DISABILITY DISCRIMINATION CASES

The DCR recently filed complaints on behalf of two individuals who alleged that their employers discriminated against them based on physical disabilities. The following are summaries of both cases, which are currently in conciliation.

Mary Ellen Deegan v. Tech Data

In January 2004, the DCR issued a finding of probable cause in the case of a Berlin, NJ woman who alleged that she was subject to differential pay and eventually discharged from her supervisory position with a national distributor of computer products because of her sex and disability.

The Complainant, Mary Ellen Deegan, worked as a configuration and assembly supervisor from September 1999 to June 2001 for Tech Data of Swedesboro. She alleged that she was held to a higher work standard than her male counterparts and unfairly discharged after taking medical leave for treatment of hypertension and depression.

Based on documentation and interviews, DCR investigators determined that despite possessing more experience and supervising larger staffs, Respondent Tech Data

paid the Complainant nearly \$10,000 less in salary than other male supervisors. Investigators also found that the complainant was denied a bonus in 2000 while a male supervisor received a \$1,300 bonus for attaining production goals completed by the Complainant's unit. Respondent denied subjecting Complainant to unlawful discrimination for any reason.

Domenic J. DiTizio, Sr., v. Camden County College/Ray Bavi

An investigation by the DCR into allegations of discrimination on the basis of disability resulted in a December 2003 finding of probable cause on behalf of a Camden County College custodian with heart disease. The Complainant, Domenic J. DiTizio of Philadelphia, PA, alleged that he was required by supervisors to operate heavy equipment and perform other work duties that exacerbated a pre-existing heart condition.

The DCR investigation revealed that the Respondents, Camden County College and Ray Bavi, Executive Director of Facilities Operations, ignored written medical documentation describing work limitations set by the Complainant's physician. The investigation also found that, despite offering to provide accommodations to permit the Complainant to perform his job, supervisors never acted and instead issued him more work duties and harassed and criticized him when he failed to perform them. Respondents have denied all allegations of discrimination.

Over the coming year, disability discrimination complaints will receive greater attention with the creation of the DCR's new Disabilities and Public Accommodations Special Investigations Unit. With the help of this new unit, and the dedicated investigators and professionals working in it, we will redouble our efforts to ensure that the civil rights of all New Jersey residents, including those with disabilities, are protected. ▼

From the Desk of the Director The Division's Focus on Disability Discrimination



Director J. Frank Vespa-Papaleo

More than 1.3 million people with disabilities call New Jersey home. Many of these residents suffer from physical disabilities that restrict their access to employment, recreational locations and places of public accommo-

tion. Still others struggle with depression, anxiety, stress or mental disabilities that often are misunderstood by the general public, or worse, become an unfair justification for disparate treatment in the workplace, housing and public spaces.

As the Director of the state agency responsible for protecting the rights of all residents of New Jersey — including those with disabilities — from unlawful discrimination in employment, housing and public accommodations, I know how important enforcement initiatives and prosecutions are in achieving equal treatment under the law.

That's one of the reasons I recently established our first-ever **Disabilities and Public Accommodations Special Investigations Unit (DPA)**. This new unit will work closely with advocacy groups for the disabled and pursue investigations that will have the greatest impact on addressing systemic discrimination, particularly in places of public accommodation.

But aggressive enforcement alone is not enough. If we are to have a meaningful impact on the social barriers and perceptions that foster discriminatory conduct in the first place, we must continue to balance proactive enforcement measures with ongoing education and public outreach.

In this case, that means targeting our outreach to employers, retail establishments and, indeed, the disabled community itself. In affording people the opportunity to exert their rights, we must first ensure they have the information and resources to do so.

To this end, the Division will join with the **U.S. Equal Employment Opportunity Commission (EEOC)** in sponsoring two regional law conferences designed to educate and raise awareness among New Jersey's deaf and hard of hearing population.

The first annual **Disabilities Law Conference, "Protecting the Rights of People With Hearing Loss,"** will be held twice: first on March 18 at Camden County College's Blackwood Campus, then on March 22 at Montclair State University's Student Center. The conferences will be structured with the deaf and hard of hearing in mind, and include training on the Law Against Discrimination (LAD) and the Americans with Disabilities Act (ADA). Additionally, the conferences will be co-sponsored by Governor James E. McGreevey, Attorney General Peter C. Harvey, the **NJ Division of Elections**, the **NJ Division on Disability Services**, the **NJ Human Relations Council** and the **NJ Division of Highway Traffic Safety**, which will provide information on pedestrian safety for those with hearing loss.

Our primary goal at the conferences will be to educate this community of their rights to accommodation, employment, housing and public services. Although many people with disabilities are aware of their rights, they may not necessarily know how to proceed once their rights have been violated. Or, they may not have the means and resources to file a complaint. Through these two conferences, we will cover the specifics of the law and provide persons with hearing loss with information on services offered by the Division and other agencies.

I want to take this opportunity to thank Chris Tester, who is the Division's first deaf investigator, for coordinating the conferences. Chris and the conference committee he organized have been working with the **NJ Division of the Deaf and Hard of Hearing** in planning the conferences.

Chris was also instrumental in arranging a recent visit by myself, DPA Unit Manager

Doris Taylor, Deputy Attorney General Anne Marie Kelly and DPA staff to the Mary Katzenbach School for the Deaf in West Trenton.

The purpose of the visit was to offer Division staff a glimpse of the deaf and hard of hearing community interacting and to show what types of public accommodations are deemed reasonable for a deaf person. Following the tour of the school some of the unit investigators I spoke to said the visit increased their cultural sensitivity, and helped them recognize the diversity within the deaf and hard of hearing community. For example, they observed some students using ASL exclusively while others used a combination of ASL and speech. On the other hand, we learned that several students had partial hearing while others could not hear at all.

In the past year, the Division has equipped all of its offices with assisted listening devices and TTY (telephone typewriters) to help the deaf or hard of hearing communicate with our staff and investigators. We also employ the use of American Sign Language (ASL) interpreters.

The Division is also reaching out to other groups in the disabled community. Some of the technological upgrades we've made to accommodate the visually impaired include Braille printers for recreating our documents in Braille, making our fact sheets available on audio-cassette tape and in Braille, and providing many of our staff with business cards printed in Braille. Many of our publications are available online via our Web site:

www.NJCivilRights.org.

Throughout the winter of 2004, staff and investigators will participate in similar events and seminars to better prepare them for interacting with the deaf and hard of hearing. We are also planning to provide our DPA staff with training about various disabilities, agencies and advocacy groups to ensure the most effective enforcement and outreach effort to New Jersey's diverse communities. ▼



Division Proposes Rule Changes to Permit Paperless Filing of MDRR and Late Fees

In an effort to make compliance with the State's "Multiple-Dwelling Report Rule" (MDRR) easier for apartment complex owners, the Division on Civil Rights proposed amendments to the law that would permit owners to complete and submit the annual report on-line. The creation of a new "paperless" filing system would make MDRR reporting simple, cheaper and more efficient.

The proposed amendments also call for imposing specific penalties against landlords who fail to file their reports in a timely fashion. The Division currently

imposes penalties for filing late reports on a case-by-case basis. The 60-day public comment period on the proposed rule changes expired on January 29, 2004. The Division will then review any public comments and consider revising the proposed regulations. If no additional revisions are proposed the new regulations will become effective on or about March 1, 2004.

The MDRR obligates landlords with 25 or more housing units to submit an annual report to the Division detailing the racial and ethnic composition of their housing

applicants and leaseholders, as well as accommodations to permit access to buildings and developments for persons with disabilities. Electronic filing of the MDRR data would reduce the amount of paperwork for apartment owners and the Division while increasing compliance with the law.

The Division already makes MDRR annual report forms available for downloading on its Web site: www.NJCivilRights.org. If the regulations are put in place, the new paperless filing system will be operational sometime in the fall. ▼

New Investigations Unit Working Closely with Advocates for the Disabled

The Division on Civil Rights' Disabilities and Public Accommodations Special Investigations Unit (DPA) is working with advocacy groups for the disabled to identify obstacles people with disabilities face on daily basis.

Division Director J. Frank Vespa-Papaleo said that by partnering with advocates and other state agencies that serve persons with disabilities, the unit will be able to prioritize its investigations, and ensure that limited resources are being used where they will be most effective.

"The advocates are some of our best sources of referrals, as well as crucial liaisons to the disabled community in terms of educating people about the work of Division and the Law Against Discrimination," said Vespa-Papaleo. "More importantly, these organizations can assist us in focusing our resources where they will have the greatest impact on cases of systemic discrimination."

The Chief of the DPA Unit, James Sincaglia, believes the unit is poised to reverse a trend at the Division in which public accommodation cases were not a top priority.

"In the past we were not proactive in the area of public accommodations. We're going

to try and change that," said Sincaglia. "That's where you see the kind of systemic discrimination that impacts people with disabilities because society by and large does not accommodate them. There are restrictions on access and proprietors tend to create environments for the able-bodied, whether we're talking about retail establishments, movie theaters or voting places.

"We have to change that mindset, and encourage the creation of environments where access is unfettered. So if a hearing-impaired person wants to see a movie, they do not have to wait for the second Tuesday of the month at 2 p.m. to go see it. They can go like anyone else," said Sincaglia.

The unit, which was established in September 2003, is managed by Doris Taylor, who has more than 30 years of experience with the Division. Ms. Taylor supervises six investigators assigned to the unit.

"We have seasoned investigators in the unit working out of each of the five regional offices," said Taylor. "And because the focus of the unit is on a specific area of discrimination, there is awareness and sensitivity on the part of the investigators that will enable them to draft concise, fact-

specific verified complaints, thereby leading to more thorough and efficient investigations."

In addition to working closely with advocacy groups, the unit is also collaborating with other state agencies, including the Division of Deaf and Hard of Hearing and the Division of Disability Services.

Director Vespa-Papaleo, who is one of three representatives serving on the Department of Law & Public Safety's Accommodations Review Committee, said the unit will also work with other state agencies to ensure all persons with disabilities have access to government services.

"Last year the Division equipped all of its offices with assisted listening devices and TTYs (telephone typewriters) which allow the deaf or hard of hearing to communicate by phone using a keyboard, a display screen and modem," said Vespa-Papaleo. "This technology, as well as steps we've taken to accommodate the blind and physically-disabled, are all part of a concerted effort to elevate the expectations of the disabled community when it comes to access to government services." ▼

Legal “Primer” on Practicing Before the DCR and EEOC Attracts 100 Lawyers and Professionals

More than 100 attorneys and human resources professionals participated in a unique seminar designed to highlight some of the similarities and distinctions in state and federal civil rights law as well as the many pitfalls to litigating unlawful discrimination cases in Court or before the New Jersey Division on Civil Rights (DCR) and the United States Equal Employment Opportunity Commission (EEOC).

The seminar, entitled “Making and Defending a Case of Discrimination: A Primer to Practicing Before the EEOC & DCR,” was held on Jan. 29 before a capacity audience at the New Jersey Bar Association’s Law Center in New Brunswick. The seminar was free and hosted by the DCR and EEOC.

Co-sponsors of the event included the Garden State Bar Association, the Hispanic Bar Association of New Jersey, the Asian and Pacific-American Lawyers’ Association of New Jersey and the New Jersey State Bar Association’s Labor & Employment, Minorities in the Practice and Individual Rights sections.

In his opening remarks, Division on Civil Rights Director J. Frank Vespa-Papaleo told the audience that the seminar would offer them valuable tips on administrative procedures and explain major distinctions in state and federal law.

“As lawyers you all know the law, but because you have not practiced before our agencies you may not be familiar with the administrative procedures required,” said Vespa-Papaleo. “Today we will walk you through the entire process, from a charge of discrimination to resolution of a complaint, and cover the similarities and differences in law. At the conclusion of this seminar, we hope many of you will consider pursuing this area of the law.”

The first speaker to address the group was Corrado Gigante, Newark Regional Director of the EEOC, who has more than 30 years of experience in civil rights and law enforcement at the state and federal level. In his presentation the EEOC director pointed out the distinctions between the EEOC and the DCR, including statutes of limitations, coverage entities and timely filings.

“A major distinction between federal and state is the number of employees a respondent is required to employ to constitute a valid



The speakers:
(Standing) EEOC Newark Director Corrado Gigante, DCR Director J. Frank Vespa-Papaleo;
(Seated) Patricia Barasch, Esq., Moderator Paulette Brown, Esq. and Steven Suflas, Esq.

complaint. Under one of our statutes the lowest number is 15. With the State of New Jersey you could have as little as two employees,” said Gigante. “Understanding these kind of distinctions and other statutory ground rules can be critical to one’s success before the Court and before our agencies.”

Patricia A. Barasch, a partner in the law firm of Schall & Barasch L.L.C., which specializes in representing plaintiffs in employment discrimination cases, offered the audience tips on case selection, settlement conferences and complaints that have a public impact.

She also cautioned the audience that far too many attorneys have taken a cavalier approach to entering this area of the law, and found they were in over their heads. “I strongly believe that this is not an area of the law in which general practitioners should dabble. There are simply too many pitfalls given the complexity of the law,” said Barasch, who is a frequent speaker throughout the state on sexual harassment, disability discrimination and family medical leave.

During his presentation, Steve Suflas, who has exclusively represented employers over the course of his 28 years practicing employment law, said, “Employment law is a pretty refined specialty, and New Jersey has become one of the hottest places for employment litigation.

“Twenty-five years ago you could name all the attorneys doing employment law. Today you can’t. More and more people are getting into this field of the law. But make no mistake,

the law of sexual harassment, disability discrimination and reasonable accommodation are very dense legal concepts. If you don’t know it, find someone who does before you go before the EEOC, DCR or to Court,” said Suflas.

For Ben Abraham, a recent graduate of Rutgers University Law School, the seminar reinforced his interest in specializing in civil rights law.

“The seminar was very enlightening,” said Abraham, who is currently clerking for a United States Department of Labor Administrative Law Judge. “I see myself having a future in civil rights law and to have this opportunity to gain some insight as to the nuances, strategies and ins and outs of practicing before the DCR and EEOC is very helpful.”

In addition to recent law school graduates the seminar attracted many practicing attorneys from around the metropolitan area who said attending such forums are important if you want to remain competitive in this area of the law.

“Having this kind of insight into the inner workings of these agencies is invaluable,” said Joseph E. Gehring, Jr., a management attorney with Manhattan-based Kasowitz, Benson, Torres & Friedman LLP. “It’s also great to see the DCR and EEOC reaching out to the attorneys who practice in this area. I hope to see them (DCR and EEOC) work together on more seminars like this in the future.” ▼



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If you would like to receive future editions of Outreach and other Division on Civil Rights publications, please register on the Web at

www.NJCivilRights.org

Or contact the Division on Civil Rights at:

- 609-292-4605
- Fax: 609-292-3458
- TTY: 609-292-1785



Three members of the New Jersey Advisory Committee, United States Commission on Civil Rights recently paid a visit to the New Jersey Commission on Civil Rights, furthering the cooperative efforts of the two bodies. Pictured from left to right are: (standing) Deputy Attorneys General Joyce Wan and Charles Cohen, Commissioner Kun Y. Lee, Ved P. Chaudhary, Ph.d, Vice Chairperson, Ms. Leanna Brown, Chairperson, Chairman Felton Lingo, Commissioner Sherine El-Abd, Mr. Ronald A. Alum, Vice Chairperson; (seated) Director J. Frank Vespa-Papaleo, Commissioner John Crowell Campbell and Commissioner Dr. Joan Rivitz.

The **NJ Division on Civil Rights** and the **NJ Division of the Deaf and Hard of Hearing** are pleased to invite you to the **First Annual Disability Law Conference: Protecting the Rights of People with Hearing Loss free of charge.**

- **Have you ever been denied an interpreter?**
- **Are you being passed over for promotions at work?**
- **Do you know how New Jersey law protects you?**

This is an opportunity to learn about the New Jersey Law Against Discrimination and what the State of New Jersey is doing to uphold your rights as a resident with hearing loss. Experts in the field will explain what you can do if your rights have been violated.

The conference will be held twice. Refreshments will be provided

March 18 at 6 – 9 p.m.

**Camden County College
Blackwood Campus
CIM Auditorium**

Co-sponsored by the college on the behalf of the MidAtlantic Post-Secondary Center for Deaf and Hard of Hearing Students

March 22 at 6 – 9 p.m.

**Montclair State University
Student Center Ballroom
Upper Montclair**

Co-sponsored by Montclair State University's Service to Students with Disabilities Department



To register, please visit our Web site at www.NJCivilRights.org or call (609) 292-4605, TTY: (609) 292-1785

Co-sponsored by

The Office of the Governor
Office of the Attorney General
Equal Employment Opportunity Commission

Division of Highway Traffic Safety
NJ Human Relations Council

Division of Elections
Division of Disability Services

Who We are and What We Do: The NJ Division of Disability Services

by Javier Robles, Deputy Director, NJ Division of Disability Services



Javier Robles

Acquiring a disability at the age of 16 has offered me a perspective that not many people have had. Someone born with a disability does not have the experience of living in a somewhat barrier free world. Someone who has never had a

disability can empathize with, and in some cases have a deep understanding of, the world people with disabilities live in. However, they too may be unaware of the everyday barriers faced by the disabled.

Today, I am the Deputy Director of the Division of Disability Services, a Division of the Department of Human Services. Trust me when I tell you, a title and supervisory role do not magically make barriers disappear. I am still frustrated when I spend an hour driving to a restaurant that is supposed to be accessible, and find out that it is not. But I find encouragement within our Division, and its philosophy of consumer friendly service and interagency partnership. From the Division Director, William Ditto, to frontline staff, the mission is the same: to promote and facilitate the maximum independence and participation of people with disabilities in the community.

Since its formation in 1997, the Division of Disability Services (DDS)—originally established as the State Office of Disability Services has been charged with maintaining a comprehensive Information and Referral System for the residents of New Jersey who require assistance in obtaining information on programs and services related to all aspects of disability. By acting as the single point-of-entry for disability-related information in the State, we have grown and centralized information and assistance to these groups.

During its four-year tenure, the four person staff of the office of **Information and Assistance Services** has responded to over 25,000 individual requests and inquiries. In that time, the staff has discovered that there is no single way to provide Information and Referral services to the disabled population. The needs of callers with disabilities are too diverse and complex to develop a general

service delivery model. The ability to treat all callers as individuals has made a huge difference in the way we handle information requests.

While **Information and Assistance** is one of the prime reasons people call DDS, we also operate other statewide programs, some of which can help revolutionize the way people with disabilities live.

Personal Preference Program, Cash & Counseling Demonstration: Funded by the Robert Wood Johnson Foundation, this program allows disabled Medicaid recipients who are eligible for personal care to direct their own care and decide what services they need.

New Jersey Workability Program: Under this program, individuals with disabilities who meet eligibility criteria are able to work and receive full Medicaid coverage. Nearly 1,000 residents with disabilities have acquired and maintained employment through this program. NJ Workability has also contracted with the Voorhees Transportation Center at Rutgers University to research and produce New Jersey's first five-year transportation plan for working people with disabilities. Transportation continues to be an obstacle for people with disabilities who are ready and able to work, so the completed five-year plan will give DDS and the State of New Jersey a valuable tool that will identify barriers and offer solutions.

Personal Assistance Services Program (PASP): This program has been a source of independence for many individuals with disabilities seeking to work, go to school, or volunteer. It allows people with disabilities who are able to direct their own services an assessed number of hours for personal care services.

Maintaining people in the community is a goal of DDS. As a result, we offer numerous programs under our office of **Home and Community Services**. Most of the programs offer benefits that allow people with disabilities the opportunity to live in a community setting; contingent upon their meeting the proper eligibility criteria. One of these programs is the **Community Resources for People with Disabilities Waiver (CRPD)** for individuals who meet a minimum "nursing facility level of care." A second is the

Personal Care Assistant Services (PCA) program, an option for those needing homecare services.

For more information on the programs mentioned above and others, please contact the Division of Disability Services at **1-888-285-3036**; or **TTY 609-292-1210**; or visit our Web site at www.state.nj.us/humanservices/dds. ▼

Black History Month

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say that New Jersey recently took another major step forward in guaranteeing its residents the basic rights they deserve. In January 2004, I signed the landmark Domestic Partnership Act into law, and in doing so, extended important civil rights and privileges to more of New Jersey's residents. The historic legislation grants individuals who have entered into enduring, committed relationship, basic rights such as visiting a loved one in the hospital or the right to make certain critical health care decisions in emergency situations.

Under the Act, individuals who meet the series of standards—including co-habitation and joint finances—would be eligible to receive certain healthcare and retirement benefits. This law, which takes effect on July 11, would not have been possible without bipartisan support in the New Jersey State Senate and General Assembly, and the efforts of its sponsors: Richard J. Codey, Loretta Weinberg, Bonnie Watson Coleman, John McKeon, Joseph Roberts and Anthony Imperuduto.

The Domestic Partnership Act is the latest example of my administration's commitment to developing public policies that expand civil rights, promote diversity and remove barriers that prevent our residents from participating fully in society.

A. Philip Randolph once said, "Equality is the heart and essence of democracy, freedom and justice." It is also a goal we must continue to strive for as we invest in New Jersey's children, families and communities, and extend opportunities for all our residents to live fruitful and productive lives. ▼



A Review of Recent Director's Orders

by Assistant Director Gary LoCassio

Beginning with this edition of *Outreach*, this column will review some of the more interesting final administrative decisions issued by Director J. Frank Vespa-Papaleo over the preceding several months. These final Director's orders, of course, are of primary interest to the actual parties to a contested case since they determine who ultimately wins and loses, and whether there has been a violation of either the Law Against Discrimination (LAD) or the Family Leave Act (FLA). But beyond adjudicating a particular LAD or FLA claim, the orders explore the legal standards and analyses that form the underpinnings of the Director's decisions, and reflect the Director's interpretation of various legal issues as the caselaw continues to evolve. In these respects, the orders can be of interest to third parties as well. So we invite employment law attorneys, human resource professionals, and anyone else interested in civil rights issues to review this column each quarter, and to visit the Division's Web site to read in their entirety any decisions which are of interest.

Disability discrimination complaints comprise almost one-quarter of the Division's docket. The Director's decision in Ware v. County of Mercer offers an instructive discussion of the legal standards governing a claim in which the employer asserts as a defense that an applicant was not hired because his disability would either prevent him from performing the job or pose a substantial safety risk. Mr. Ware, who had lost the vision in his right eye as a result of an accident when he was fifteen, applied for a position as a County Corrections Officer, but was turned down after a physical exam. The County determined that Mr. Ware's disability would prevent him from completing the training mandated by the Police Training Commission. The County had based its determination on internal Department of Corrections medical standards which required recruits attending the training academy to have uncorrected visual acuity of no less than 20/100 in both eyes. Based on this standard, the County removed Mr. Ware from the eligibility list.

Based on the undisputed facts in this case, the Director adopted the Administrative Law Judge's order granting Mr. Ware's motion for

summary decision, concluding that the County failed to show it acted reasonably in reaching the conclusion that Mr. Ware could not undergo the physical training and perform the essential functions of the job. Significantly, the County failed to conduct an individualized assessment of the safety risk presented by Mr. Ware's condition, a process that is required in order for an employer to meet its burden of demonstrating that a prospective employee's disability precludes safe and adequate performance of the job, with or without reasonable accommodation.

Moreover, the record demonstrated that the County came to the wrong conclusion about Mr. Ware's ability. After a complete ophthalmologic examination, the Merit System Board's Medical Examiners Panel found that, because of the vision in his left eye, Mr. Ware would not be a direct threat to himself or others, and should be considered physically capable of undergoing training and performing the corrections officer duties. Further, the Director found that the County's reliance on the Department of Corrections Medical Standards was misplaced since they were based on Police Training Commission standards. The New Jersey Supreme Court has held that the Police Training Commission does not have good cause to dismiss a trainee simply because of limited vision in one eye where there is no substantial evidence that the trainee would not be able to complete the training or would create a substantial risk of serious injury (see Greenwood v. State Police Training Center). Based on this record, the Director awarded Mr. Ware over \$81,900 in back pay and interest, and \$10,000 in compensatory damages, and assessed a penalty of \$7,500. The matter is being appealed by the County.

An important sexual harassment case decided this quarter underscored why it is critically important for employers to implement policies which discourage harassment and ensure that complaints of harassment are promptly investigated. In Shockley v. R&R TRAA Company and R&R TRAA Enterprises, the Director confronted the question of whether and under what circumstances an employer can escape

liability even if the record demonstrates that an employee has been subjected to a hostile environment. After a hearing, the Director found that Ms. Shockley, who worked at a McDonald's franchise for four years, was subjected to sexually offensive gestures and comments by two male co-workers which established a hostile work environment. This finding notwithstanding, the Director concluded that her employer was not liable for the harassment under the LAD because it took appropriate action to prevent and remedy the harassment when it disciplined the male employees on both occasions it was made aware of harassing conduct. Relying on the guiding principles in Lehmann v. Toys "R" Us, the landmark New Jersey Supreme Court decision in this area, the Director found that an employer can be held liable when one co-worker harasses another, but only if management-level employees knew or should have known about the campaign of harassment and the employer failed to take prompt and effective measures to stop it. Under the facts of this case, the Director concluded that the employer could not be found liable because it investigated both instances of harassment of which it was made aware, and took prompt action to discipline the offending parties. There was no evidence that the conduct continued subsequent to the corrective action.

Critical to the Director's decision was his finding that this McDonald's franchise had implemented an effective and almost exemplary anti-harassment policy and complaint mechanism. The policy was clear and concise, listed contact information for high level supervisors, was widely distributed and was the subject of employee training and orientation sessions. The procedure had resulted in the internal investigation of ten complaints, and the termination of four offending employees over a four year period, and was in fact utilized by Ms. Shockley to remedy the harassment to which she was subjected. Based on this record, the employer could not be found liable under the Lehmann standards.

The full opinions in these and all other matters that are the subject of Director's orders can be found at www.NJCivilRights.org ▼

Commission Chairman's Interest in Civil Rights Traced Back to South Jersey



Felton Lingo, Sr.

If you ask New Jersey Commission on Civil Rights Chairman Felton Lingo why he became involved in civil rights, one might expect him to recall something that happened to him in the small town of Gordon, GA where he was born. But for Lingo, it began with a troubling experience that occurred more than 30 years ago in South Jersey.

During the spring of 1972 Lingo answered an advertisement in a local paper offering an apartment for rent. The apartment was in fact several converted rooms of a private residence located in Bridgeton, NJ, and not far from the local high school where Lingo was a teacher and coach. The future Commission on Civil Rights Chairman said he was stunned at the response he received from the owner.

"What she said to me over the phone literally took me right out of my seat," said Lingo, who was subjected to ugly racial slurs. "I got the shock of my life."

Looking back, the Commission's longest-serving member says that Bridgeton is a

much more diverse community today than it was 30 years ago. But the experience, as well as other encounters with racism, motivated him to get involved with anti-discrimination and civil rights causes. In the years that followed, he became active on the New Jersey Education Association's Human Rights Committee. He was eventually appointed to the Commission on Civil Rights in 1985 before becoming its Vice-Chairman in 1991, and Chairman in 1993.

Lingo says he had a "gung-ho" attitude during his early years with the Commission as well as a "burning desire to change the world tomorrow." By his own account he is much calmer these days, a demeanor he attributes to witnessing the Division move ahead proactively with anti-discrimination initiatives and securing the necessary resources to pursue larger investigations.

"The Division's housing discrimination initiatives are good examples of the leadership Attorney General Peter Harvey

and Director Frank Vespa-Papaleo have brought to the agency. They're building a positive public perception of the Division and its work," said Lingo, who grew up in Bridgeton and has been teaching and coaching athletics in the Bridgeton school system for more than 35 years. "We're on an upswing right now. We have been more proactive than we have been in a while, and having new members on the Commission that bring a lot of energy and vigor is also a plus."

In March, the Commission will meet with the Attorney General Harvey. Lingo believes past Commission meetings with the state's Attorney General have helped minimize budget impacts to the Division. The month of March may also be Lingo's last as Chairman. The Commission's six members will vote in February for a new chairman and vice chairman.

"I think it's time for a changing of the guard," said Lingo, who has been a Commission member for 18 years. "It's been a good experience for me, serving as Chairman. I think I've given something back over my years of service to the state. If I had it to do over again, I would not change a thing." ▼

Want to Learn More?

Private Training is Available

The Division on Civil Rights offers Private Training on how to avoid and deal with discrimination.

Contact the Bureau of Prevention and Community Relations at:

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Division on Civil Rights Outreach

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